

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

-vs-

PABLO ANTONIO NAVA-ESPINOSA,

Defendant.

No. 2:12-CR-2015-WFN-1

ORDER

Pending before the Court is Defendant's Motion for a Second Reconsideration to Grant Reduction of Sentence ECF No. 99. Defendant asks that the Court reconsider denial of his request for a two level reduction pursuant to Amendment 782. Though ultimately Defendant is not entitled to relief, the Defendant demonstrates understandable confusion regarding the applicability of *Johnson v. United States*.

In the Court's Order denying Defendant's request for a two level reduction, the Court indicated that Defendant is ineligible for the reduction because he was sentenced pursuant to the Career Offender Guideline rather than the drug quantity table. *Johnson* addresses the residual clause in 18 U.S.C. § 924. The Supreme Court determined that when defining a crime of violence under the Armed Career Criminal Act [ACCA] the phrase, "or otherwise involves conduct that presents a serious potential risk of physical injury to another" cannot be applied in a consistent and fair manner, so struck that phrase from the statute. The United States Sentencing Guidelines adopt the same definition for a crime of violence as the ACCA for the purposes of application of the Career Offender Guideline found at § 4B1.1. The Court has not yet determined whether the Supreme Court's decision in *Johnson* applies to application of the Career Offender Guideline. However, even if the Court determined it did, such a decision would not be helpful to Defendant. Defendant's two predicate convictions qualifying him as a Career Offender were drug trafficking

1 crimes, not crimes of violence. *Johnson* has no effect on application of Career Offender
2 for defendants convicted of prior drug trafficking crimes. The Court has reviewed the file
3 and Motions and is fully informed. Accordingly,

4 **IT IS ORDERED** that Defendant's Motion for a Second Reconsideration . . . , filed
5 August 12, 2016, **ECF No. 99**, is **GRANTED**. The Court reconsidered the merits of
6 Defendant's Motion to Reduce Sentence in light of *Johnson*, but determines that the
7 original decision was correct, so Defendant's Motion to Reduce Sentence is **DENIED**.

8 The District Court Executive is directed to file this Order and provide copies to
9 counsel.

10 **DATED** this 13th day of September, 2016.

11 s/ Wm. Fremming Nielsen

12 WM. FREMMING NIELSEN

13 SENIOR UNITED STATES DISTRICT JUDGE

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